IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.549/2000

Date of Decision :10th October, 2007

State of H.P. …Appellant.

Versus:

Chain Singh. …Respodent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant:	Mr.Ashok Chaudhary, Addl. Advocate General. .
For Respondent.	Mr.R.K.Gautam, Sr. Advocate with Mr.Naveen Bhardwaj, Advocate.

Sanjay Karol, J(Oral).

The present appeal arises out of the judgment dated 18th January, 2000 passed by the Judicial Magistrate, Ist Class, Bilaspur in Criminal Case No.149/2 of 1997 titled as State Vs. Chain Singh acquitting the accused of the charged offence under Sections 323, 325 and 506 of the Indian Penal Code.

F.I.R.No.150/97 dated 1st October, 1997 was registered with Police Station Barmana, H.P. under Sections 325,323 and 506 I.P.C. on the basis of complaint rapat Ext.PW-8/A. As per the case of the prosecution, on 27th September, 1997 when the accused parked his vehicle in front of the complainant house he started playing the Tape Recorder at a high volume to which Jagdish Singh (PW-6)

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

objected and requested him to play the same at low volume. The accused insisted on the same being played at high volume and threatened him of dire consequences. On 28th July, 1997 at about 11.30 A.M. when the complainant was on his way to have his meal at the local hotel, he met the accused and inquired as to why he was quarreling with his father to which the accused gave a blow on the mouth and blood started oozing from the wound. On raising hue and cry, Amar Jeet Singh (PW-3) came on the spot and rescued PW-1. The accused also threatened PW-1 of dire consequences. The Investigating Officer got the accused medically examined which showed that the complainant sustained grievous and also simple injury on his body.

After completing the investigation the challan was presented in the Court for trial and after due compliance of the provisions of Section 207 Cr.P.C. the charges against the accused under Sections 325, 323 and 506 of the Indian Penal Code were framed. The accused pleaded not guilty and claimed trial.

The prosecution, in all examined eleven witnesses to prove its case. The statement of the accused under Section 313 Cr.P.C. was also recorded.

The court below, after appreciating the evidence and other material on record, acquitted the accused on the ground that two versions were emerging through the prosecution witness and the version favouring the accused was adopted.

I have heard learned counsel for the parties and gone through the record. The prosecution has examined 11 witnesses. Raghbinder Singh (PW-1) is the complainant. Brhamu Ram (PW-2),

Prem Lal (PW-5) and Shyam Lal (PW-10) are the independent eye witnesses. Amer Jeet Singh (PW-3) is also an eye witness. Dr.S.P.Dhiman (PW-4) and Dr.T.D.Tondon (PW-7) have medically examined PW-1 and proved the injury suffered by him. Jagdish Singh (PW-6) is the father of PW-1. L.H.C. Jai Parkash (PW-8), L.H.C. Sam Sher Singh (PW-9) and H.C.Rajender Kumar (PW-11) are the police officials who have either carried out the investigation or have obtained the M.L.C. reports (Ext.PW-4/A, Ext.PW-7/A,Ext.PW-7/B, Ext.PW-7/C and Ext.PW-8/B). They have also prepared site plans Ext.PW-1/A and PW-11/A and also recorded the statements of PW-2 and PW-10 as Ext.PW-11/B and Ext.PW-11/C respectively.

PW-2 and PW-10 have not supported the case of the prosecution at all. The said witnesses were declared hostile and were examined by the Public Prosecutor. In the cross-examination nothing has turned out which would prove the guilt of the accused. In fact both of them have in one voice stated that both accused and PW-1 were quarreling and abusing each other and none of them gave blow to either of them. The alleged incident is stated to have taken place in a broad day light.

The version of PW-1 and his father PW-6 is also contradictory. Whereas PW-1 has admitted that he was not on the spot on 27th September, 1997 when the accused had misbehaved and quarreled but as per PW-6, his son, PW-1, was present at that time. Further as per the version of PW-1 the accused had only threatened PW-6 who has, however, deposed that the accused had caught hold of him by his neck and PW-1 had rescued him from the clutches of the accused. In this view of the matter, the statements of both PW-1 and

PW-6 cannot be said to be completely truthful and inspiring confidence.

PW-3 has admitted that he is a resident of the same village as that of PW-1. Importantly, he has also deposed that both accused and the complainant had given punches of blow to one another. It is not the case of the prosecution that PW-1 had also given blows to the accused. The prosecution has suppressed this part of the incident. PW-5 is an independent witness and has deposed that even though the quarrel did take place but, however, neither the accused nor the complainant received any injury. In fact PW-5 has corroborated the versions of PW-2 and PW-10 that no blows were given by the accused resulting into injury on the body of PW-1.

No doubt that PW-4 and PW-7 have deposed that the injury sustained by PW-1 is grievous in nature but, however, both of them have stated that the same could have been caused by a fall on a hard surface. The statements of the witnesses are contradictory and unreliable. The Court below has already held that in view of two versions available on record, one which favours the accused needs to be considered and benefit given to the accused. In my view, the decision taken by the court below is not perverse. The court below has correctly appreciated the evidence and material on record to arrive at its conclusion. In ***Samghaji Kariba Patil Vs. State of Karnataka,*** (2006) 10 Supreme court Cases 494, it has been held by the apex Court that while dealing with the case of acquittal, the High Court should not ordinarily overturn a judgment if two views are possible.

Therefore, it is clear that the testimony of PW-1,PW-3 and PW-6 needs to be examined with caution and care to ascertain as

to whether the prosecution has been able to prove the guilt of the accused for the charged offence. In ***Sharad Birdhichand Sarda Vs. State of Maharashtra***, AIR 1984 Supreme Court 1622, the apex Court has held that the interested witnesses including close relatives of the victim have tendency to exaggerate or add facts and therefore the Court should examine the evidence with great care and caution. The Court further held that the circumstance not put to the accused cannot be used against him. As per the version of the complainant, due to the blows given by the accused he suffered an injury on his mouth resulting into breaking of his tooth. This circumstance has not been put to the accused in the statement recorded under Section 313 Cr.P.C.

In my view, the court below has correctly appreciated the material on record while arriving at its conclusion. I see no reason to interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

October 10, 2007(R)